



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-610
Regulation Title:	Rules Governing the Solicitation of Contributions
Action Title:	Amend
Date:	July 7, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation clarifies and establishes uniform registration or exemption procedures, and requirements for basic information disclosure and submission of related financial statements from charitable organizations and professional solicitors.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Virginia Solicitation of Contributions (VSOC) Law (Title 57, Chapter 5, and Section 57-48 through 57-69 of the Code of Virginia (1950), as amended), was enacted by the General Assembly in 1974 to prevent solicitation fraud. Section 57-66 of the VSOC Law empowers the Board of Agriculture and Consumer Services, at its discretion, to make and publish rules and regulations relative to the provisions of this chapter.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The agency published its notice in The Virginia Register of Regulations on April 10, 2000, advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). The agency received no comments from the public in response to this notice. An informal advisory group was not formed for the purpose of assisting with this periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals of this regulation are (1) to protect the public's welfare at the least possible cost and with the least possible intrusiveness to the citizens and businesses of the Commonwealth; (2) to prevent solicitation fraud through registration requirements, public warnings of unregistered solicitations, investigations of fund-raising activities, and referral of violations to legal officials for prosecution; and (3) to set specific information disclosure procedures for both charitable organizations and professional solicitors with respect to registration, identification, and submission of financial statements.

The regulation is essential to protect the welfare of citizens. Prior to enactment of the VSOC Law in 1974 and adoption of the regulation in 1978, there were no means in Virginia (except for 14 local ordinances) to (1) register charitable organizations, professional solicitors and professional fund-raising counsel; and (2) maintain records of the contributions they received

and the disbursement of these contributions. In the absence of regulations, solicitors for charitable causes were able to operate without having to disclose how contributions were used.

Based on statistics provided by the American Association of Fund Raising Counsel, and statistical abstracts of the United States and Commonwealth of Virginia, it is estimated that \$2.5 billion is donated to charitable or civic organizations annually in the Commonwealth of Virginia. This estimate excludes religious contributions, which account for nearly one-half of all charitable contributions.

This regulation protects the welfare of citizens who donate to charitable causes by requiring certain specific public disclosures that must appear in solicitation materials. It also ensures the review and maintenance of records submitted by regulated organizations, along with public access to those records, including the organizations' income and expense statements.

The regulation itself is clearly written. However, the number of past amendments to the VSOC Law have resulted in an increase in the number of entities that now qualify for exemption for annual registration requirements. The increase in forms to accommodate every new type of exempt organization has caused confusion among the regulated entities. The agency seeks to address this concern by consolidating the existing forms into a single, more meaningful document that will (1) provide consumers with necessary information about the organizations to which they are considering donating to, and (2) reduce both the number of inquiries from clients requesting clarification and the investigative time spent researching basic operational information about each regulated entity.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The agency has considered during this review, the elimination of the regulation. However, this option would be detrimental to all parties involved. The resulting lack of controls would cause significant confusion among legitimate regulated entities and the public. The elimination of uniform reporting and disclosure standards would also increase the likelihood of fraud and misrepresentation. There are no other viable alternatives in the absence of either a national regulatory framework or a practical self-regulatory model for this industry.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

This regulation should be amended to conform with amendments to the VSOC Law that have allowed additional types of organizations to qualify for exemption from the annual registration process. Although the VSOC Law requires professional solicitors to make certain disclosures, regulators nationwide are aware that these disclosures are seldom made in the initial telephone call to consumers. Thus, consumers do not know that they have been solicited by someone other than a member of the charity on whose behalf the solicitation was made. Amending this regulation would establish procedures for compliance with the VSOC Law. Section 57-55.3 of the law requires professional solicitors to disclose, in writing, that a financial statement is available from the agency. The amendment would require solicitors to include the following elements in the written disclosure: Company name, professional solicitor status, name of the charity on whose behalf funds are being solicited, and a statement indicating that the professional solicitor submits a Final Accounting Report to the agency which may be available upon request. Further, this disclosure must be displayed prominently on the front of the invoice or thank you letter typically sent to the consumers in response to a telephone pledge.

Additionally, many solicitors and other direct mail fund raisers use private mailboxes for the collection and forwarding of mail from consumers. These private mailboxes are selected based on their geographical proximity to the consumers being solicited. The consumers are led to believe that their donations are going to a local or regional charity, based on the return address, when, in fact, their donation may be forwarded to another state. Section 57-57 L of the VSOC Law prohibits the use of any device, scheme, or artifice to defraud or mislead consumers. The agency intends to add specific questions to the Solicitation Notice and all registration forms that will disclose any use of private mail boxes and the ultimate destination of mail received at those boxes. Additionally, charitable organizations, fund-raising counsels, and solicitors will be required to print on any return envelope provided to consumers the actual name of the company to which the return mail is addressed, as follows: name of charity, c/o name of private mailbox company or other recipient, address, city, state, zip. This will help consumers determine that companies other than the charities themselves are handling their donations.

Professional solicitors often engage in the use of subcontractors. The proposed amendment to the regulation will clarify whose name must be disclosed to the public during the solicitation. Additionally, a question will be added to the Solicitation Notice to require solicitors to disclose the names and addresses of any subcontractors hired to conduct solicitations.

The total number of exemption categories has risen from eight to twelve, which necessitated the creation of additional application forms. It is the agency's intention to simplify the exemption application process by combining all the basic organizational questions into one form and using an additional page to address questions relating to the specific exemption for which the organization is applying. Thus, clients will have only one form to use, instead of selecting from twelve forms.

Substance of Proposed Action

Please detail any changes that would be implemented.

Amend the following sections to make the language compatible with the VSOC Law.

2VAC5-610-20 Initial registration and 2VAC5-610-30 Renewal of annual registration.

? Provide instructions on filing the Unified Registration Statement, a nationally standardized registration document that the agency currently accepts from charities that operate in multiple states.

2VAC5-610-40 Exemption from annual registration.

- ? Add an exemption category for non-profit debt counseling services.
- ? Add an exemption category for area agencies on aging.
- ? Add an exemption category for labor groups and trade associations.
- ? Amend the exemption category for health care institutions to include “free clinics.”
- ? Simplify application procedures for exemption from regulation by streamlining exemption applications from twelve forms to one form.

2VAC5-610-70 Rules governing a professional solicitor.

- ? Reduce the number of supporting documents that solicitors have to include with a solicitation notice.
- ? Add a provision for late filing fees by professional solicitors who file a Final Accounting Report late and establish procedures for professional solicitors to file for an extension of time to file the Final Accounting Report.
- ? Clarify that specific information must be communicated to consumers in writing, including the name of the professional solicitor, professional solicitor status, and the name of the charity on whose behalf funds are being solicited.
- ? Clarify that the financial statement is the solicitor’s Final Accounting Report.
- ? Clarify the disclosure that is required of a solicitor’s subcontractor.

2VAC5-610-80 General provisions.

- ? Add a disclosure requirement by for- profit organizations using a charitable appeal.
- ? Add a new requirement that regulated entities disclose whenever they engage in the use of private mailboxes in any communication with a consumer.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will not impact family formation or autonomy, but may impact the stability of a family by assisting them in the wise use of their financial resources. There are no adverse effects on the family.